

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN SWANN HOLDING CORP., derivatively, on  
behalf of CLUBCREATE, INC.,

Plaintiff,

-against-

COREY SIMMONS, CURTLAND FIELDS, ANNETTE  
STRICKLAND, and CLUBCREATE, INC.,

Defendants.

ANALISA TORRES, District Judge:

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ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5/25/17

13 Civ. 8619 (AT) (JLC)

**ORDER**

By orders dated January 28, 2015; April 26, 2017; and May 10, 2017, the Court directed the parties to clarify the status of this action in light of the bankruptcy proceedings concerning Defendant ClubCreate, Inc. in the United States Bankruptcy Court for the District of New Jersey. *See In re ClubCreate, Inc.*, Adv. No. 16-01877-RG (Bankr. D.N.J. filed Dec. 12, 2016); *In re ClubCreate, Inc.*, Case No. 14-35043-RG (Bankr. D.N.J. filed Dec. 12, 2014).


By e-mail dated May 8, 2017, the Chapter 7 Trustee for ClubCreate informed the Court that the adversary proceeding in the Bankruptcy Court concerns directly asserted claims similar to those asserted derivatively in this action. ECF No. 79-1. The Trustee requested that, as a result, the Court dismiss this action. *Id.* By letter dated May 12, 2017, Plaintiff John Swann Holding Corp. stated its position that an automatic bankruptcy stay applies to this action under 11 U.S.C. § 362 and that the action should be dismissed without prejudice. ECF No. 81. Finally, by letter dated May 15, 2017, Defendant Annette Strickland agreed that the bankruptcy stay applies and requested that the action be dismissed with prejudice. ECF No. 82. Defendants Corey Simmons and Curtland Fields have not responded to the Court's order.

In view of the parties' submissions and the automatic stay imposed by § 362, it is ORDERED that the above-entitled action be administratively closed subject to the right of any party to reopen the case within 30 days of (1) the lifting or modification of the automatic stay, such as by order of the Bankruptcy Court, or (2) the conclusion of the bankruptcy proceedings.

Plaintiff is directed to serve a copy of this order via e-mail on Defendant *pro se* Simmons and to file a certificate of such service on the docket. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: May 25, 2017  
New York, New York

  
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ANALISA TORRES  
United States District Judge

CC: Milica Fatovich, Counsel to Trustee Donald V. Biase  
By Chambers E-mail